

IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION

BETWEEN:

MICHELLE DOUGLAS

Plaintiff

- and -

HER MAJESTY THE QUEEN

Defendant

Stamp: COURT OF QUEEN'S BENCH FOR WESTERN CANADA
DATE: Oct 8/92
SIGNED: T. Smith

AFFIDAVIT OF GREGORY M. HEREK
(Sworn October 6, 1992)

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1. Affidavit of Gregory M. Herek, sworn October 6, 1992
2. Exhibit "A" - Curriculum Vitae of Gregory M. Herek
3. Exhibit "B" - List of References

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IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION

B E T W E E N :

MICHELLE DOUGLAS

Plaintiff

- and -

HER MAJESTY THE QUEEN

Defendant

AFFIDAVIT OF GREGORY M. HEREK

(Sworn *October 6*, 1992)

I, GREGORY M. HEREK, of the City of Albany, in the State of California, hereby MAKE OATH AND SAY AS FOLLOWS:

1. I am an Associate Research Psychologist at the University of California at Davis. I received my Ph.D. in 1983 in Psychology, with an emphasis on Personality and Social Psychology, from the University of California at Davis. In addition, I was a Post-Doctoral Fellow in Social Psychology at Yale University from 1983 to 1985. I have served as a Lecturer and Visiting Assistant Professor at Yale University and as an Assistant Professor at the Graduate Program in Social and Personality Psychology at the City University of New York. I am a fellow of the American Psychological Association and the American Psychological Society; am a member of numerous other professional organizations; have received several professional awards and honours; and have written more than twenty-five articles related to human sexuality, gender, and attitudes, which have been published in various academic journals. A copy of my curriculum vitae is annexed hereto as Exhibit "A" to this my Affidavit.

2. The term "sexual orientation: is commonly used to refer to an enduring affectional, erotic, or romantic attraction to individuals of a particular gender. Because human sexuality

differs among cultures, the term sexual orientation is used primarily in reference to western industrialized societies. Sexual orientation is usually characterized as homosexual (a primary or exclusive attraction to individuals of one's own gender), heterosexual (a primary or exclusive attraction to individuals not of one's own gender), or bisexual (a significant degree of attraction to both men and women). The term "sexual orientation" is used to describe at least four concepts: (i) sexual behaviour; (ii) psychological attraction; (iii) psychological identities; and (iv) social or cultural roles. Many individuals manifest exclusively heterosexual patterns for all four aspects of sexual orientation; others manifest exclusively homosexual patterns, and others consistently bisexual patterns. Some people, however, manifest a mix of patterns, e.g., homosexual in some aspects and heterosexual in others.

3. Sexual behaviour (which also can be called sexual conduct) refers to specific acts that are defined as sexual by the individual or society; such acts typically involve the genitalia but this is not always the case. An individual's sexual behaviour does not completely define her or his sexual orientation, and can be inconsistent with the person's psychological attraction, psychological identity, or social role. People with a homosexual orientation (based on their primary psychological attractions, psychological identity, and adherence to a social role) can engage in heterosexual behaviour and yet remain homosexual. Similarly, persons with a heterosexual orientation can engage in homosexual acts and still be heterosexual.

4. Psychological attraction refers to an individual's preference for particular types of experiences or behaviours; it is what a person might wish to do if circumstances and the environment permitted. Psychological attraction is not necessarily consistent with sexual behaviour. The Kinsey studies (A. Kinsey et al., Sexual Behaviour in the Human Male [1948], Sexual Behaviour in the Human Female [1953]) demonstrated that a significant number of U.S.

citizens in the 1940s and 1950s consciously experienced both homosexual and heterosexual attractions during their adult lives; the same is most likely true today. Yet, many people never engage in homosexual behaviour. This inconsistency between attraction and behaviour may be due to a variety of factors, including personal choice (for example, a person chooses celibacy for religious or health reasons) and environmental constraints (for example, the individual fears societal stigma or lacks available partners). Heterosexual attractions are more likely to be acted upon than homosexual attractions because they are not prohibited by society (although cultural norms prescribe appropriate practices and settings for them).

5. Psychological identity, when used in relation to sexual orientation, refers to an individual's conception of herself or himself as "a homosexual" (or "a gay man" or "a lesbian"), "a bisexual", or "a heterosexual". Knowing that an individual has a homosexual identity (for example, that a woman thinks of herself as "lesbian") does not necessarily permit assumptions about her sexual behaviour or even her pattern of psychological attractions. For example, she might engage primarily in heterosexual behaviour (e.g., sexual intercourse with men) or might refrain entirely from sexual behaviour with either gender. Similarly, a woman might think of herself as heterosexual even though she engages in sexual behaviour with other women, perhaps even on a regular basis.

6. Social roles represent the public corollary of psychological identity. The roles associated with sexual orientation are based on societal expectations about people who are homosexual, heterosexual, or bisexual. Such roles also include societal expectations about the behaviours likely to be manifested by members of the gay or lesbian community. An individual's public identification with a homosexual role or the gay community does not necessarily provide information about her or his sexual behaviours, past or present. For example, some women publically identify themselves as "lesbian" in order to make a political statement,

even though they do not have a primary erotic attraction to females.

7. In summary, the various phenomena that constitute sexual orientation are not necessarily manifested in a consistently heterosexual, homosexual, or bisexual pattern for any particular person. Some individuals who call themselves "gay" or "lesbian" do not in fact engage exclusively in sexual behaviours with people of their own gender, are not psychologically attracted exclusively to others of their own gender, do not think of themselves as homosexual, or do not publically identify with the gay community and the social roles associated with being gay. Many people who call themselves "gay" or "lesbian" of course, do manifest all of these characteristics. Thus, knowing that a person has identified himself or herself as "gay" does not necessarily reveal that person's past or present sexual behaviour, or that person's desire for future sexual behaviour.

8. No scientific consensus exists concerning why any particular person becomes heterosexual, homosexual, or bisexual. It is probably fair to assert that the majority view among scientists is that sexual orientation, like most aspects of human experience and behaviour, is influenced by both environmental and genetic influences. The relative importance of these two types of influence, however, remains the subject of scientific debate.

9. Most people experience their sexual orientation (including their sexual attractions and their romantic and affectional relationships) as a central component of their identity. Based on my extensive review of empirical research in this area, it is my opinion that most people experience their sexual orientation as an immutable aspect of themselves. This is consistent with the general lack of data demonstrating that attempts to change an individual's sexual orientation from homosexual to heterosexual have been successful. Most people do not feel that they chose their sexual orientation; rather, they

typically experience their sexual orientation as simply the way that they are.

10. The notion that homosexuals constitute a minority group comparable to racial, ethnic and religious minorities was articulated at least 40 years ago. Social scientists have since proposed many different definitions and criteria for minority groups, recognizing that not all groups fit all criteria. The most important feature is that a minority group's members must manifest one or more characteristics that society uses as a basis for discrimination, despite the irrelevance of those characteristics to the setting in which the discrimination occurs. Other features that have been used to define the characteristics of a minority group include: a self-conscious sense of community through which group members feel bound to each other through common ties; transmission of minority group membership to succeeding generations by a rule of descent; and a tendency to marry within the minority group.

11. Lesbians and gay men should be considered a minority group in Canada and the United States because homosexuality is used by both societies as a basis for differential treatment. Once a person is identified as a homosexual this identification alone is sufficient to subject them to discrimination, regardless of whether or not any actual behaviour has occurred, and regardless of whether or not this characteristic has any relevance to the setting in which the discrimination is occurring. Furthermore, homosexuals form a self-conscious community based on their sexual orientation.

12. Another feature of a minority group is the fact that myths and erroneous stereotypes are formed about the members of that group. This has certainly happened with lesbians and gay men. Examples of the myths and erroneous stereotypes which persist in North American society concerning homosexuals include the following:

(a) *Homosexuality is a form of mental illness.*

(i) Today, a large body of the published empirical research clearly refutes the notion that homosexuality *per se* is indicative of or correlated with psychopathology. The classic study in this area was conducted by Dr. Evelyn Hooker, who administered three projective tests (the Rorschach, Thematic Apperception Test, and Make-A-Picture-Story Test) to thirty homosexual males and thirty heterosexual males recruited through community organizations. The two groups were matched for age, IQ, and education; none of the men were in therapy at the time of the study. Unaware of each subject's sexual orientation, independent experts evaluated the men's overall adjustment using a five-point scale. They classified two-thirds of the heterosexuals and two-thirds of the homosexuals in the three highest categories of adjustment. When asked to identify which protocols were obtained from homosexuals, the experts could not distinguish respondents' sexual orientation at a level better than chance. Hooker concluded from her data that "homosexuality as a clinical entity does not exist" and that homosexuality is not inherently associated with psychopathology. Dozens of empirical studies have since supported Hooker's conclusion that no correlation exists between sexual orientation and psychopathology.

(ii) Confronted with overwhelming empirical evidence and changing cultural views of homosexuality, psychiatrists and psychologists have radically altered their views during the last two decades. In 1973, the American Psychiatric Association removed "homosexuality" as a diagnosis from the Diagnostic and Statistical Manual (DSM-III), replacing it with the more restrictive "ego-dystonic homosexuality". In 1986, even the "ego-dystonic homosexuality" diagnosis was eliminated; consequently,

the revised DSM-III contains no diagnostic category for homosexuality. The American Psychological Association (APA) promptly endorsed the psychiatrists' actions and has since worked intensively to eradicate the stigma historically associated with a homosexual orientation. Although a small number of individual psychologists and psychiatrists may privately continue to regard homosexuality negatively, empirical evidence and professional norms do not support any linkage of sexual orientation with psychopathology.

(b) *Because of social stigma, lesbians and gay men are more likely than heterosexuals to manifest low self-esteem, to be depressed, or to be suicidal.*

(i) Whereas the myth that homosexuality *per se* is linked to maladjustment attributes the cause of psychological dysfunction to sexual orientation, another erroneous belief blames social stigma for creating allegedly widespread problems among lesbian and gay people. In fact, like other minority group members, most gay people function effectively in North American society despite their experiences with stigma. Just as some blacks experience problems in dealing with racism and some heterosexuals experience emotional problems adjusting to their adult sexuality, some lesbians and gay men undoubtedly experience emotional problems adjusting to their sexual orientation. Although the seriousness of these cases should not be minimized, they do not provide a basis for assuming that gay people as a group manifest low self-esteem, depression, suicidal behaviour, or other psychological symptoms to a greater degree than do heterosexuals.

(ii) This is not to deny that many lesbians and gay men face difficult situations in their day-to-day lives as a

result of the stigma attached to their sexual orientation nor is it to deny that some lesbians and gay men experience these situations as stressful and develop psychological problems as a consequence. In particular, the pressure to hide one's sexual orientation and the threat of physical assaults and other hate crimes can have many negative ^{or some} affects, including psychological and physical pain. However, empirical data do not indicate that lesbians and gay men, as a group, show a greater propensity to psychological dysfunction than do heterosexuals.

(c) *Homosexuals are more likely than heterosexuals to molest children sexually.*

(i) Gay people often have been accused of preying on children. This is a manifestation of a general cultural tendency to portray disliked minority groups (eg. Jews, Blacks) as threats to the dominant society's most vulnerable members.

(ii) The empirical research relating to adult sexual orientation and molestation of children has many problems which are created by the lack of representative samples and ambiguous terminology. However, we can critically evaluate this research by searching for consistent trends in the results of empirical studies that have adequately assessed and reported the sexual orientation of perpetrators. The vast majority of perpetrators described in the scientific literature are men. In looking at these studies it is clear that gay men are no more likely than heterosexual men to molest children.

(d) *Being exposed to a homosexual parent or role model is likely to have negative effects on a child or younger person.*

- (i) In addition to fears of sexual molestation, another often cited reason for restricting contact between children or young people and adult lesbians and gay men is that such interactions might change a previously heterosexual child or young person into a homosexual or, at least, might create personal sexual conflicts and confusions for the child or young person.
 - (ii) The bulk of empirical research in this area has focused on the most powerful role models available to most children: parents. Several papers have been published in recent years reviewing data on the influences of having a lesbian mother or gay father on a child's social, psycho-logical, and sexual development. They have concluded that no evidence exists that having a gay parent or role model is harmful to the child. Nor do the children of gay parents differ significantly from children raised in heterosexual households in their development of gender identity or sexual orientation.
- (e) *Lesbians and gay men are not capable of sustained relationships; homosexual relationships are inferior to heterosexual relationships.*
- (i) The available data comparing heterosexual and homosexual relationships indicate that the two types of pairings are equally diverse in the forms they take and in the levels of psychological health associated with them. A large proportion of gay people are in steady relationships. Many of these have lasted for many years. Heterosexual and gay people appear to be similar in their satisfaction with their relationships and their feelings of liking and loving for their partner. Same sex partners may differ from heterosexual couples in that they are less likely to play rigid, gender based roles and are more likely to openly discuss issues of sexual exclusivity.

13. As a research psychologist, I have reviewed the scientific research literature relevant to the integration of gay men and lesbians within the military and have written about this topic.

14. Military service is both a burden and a source of benefits. In peacetime, such service requires submission to coercive discipline in a total institution. In time of war, it carries risk of death or injury to oneself and the possibility that one would impose death or injury on others, whether directly or indirectly. However, military service also provides opportunities for employment, training and education. Thus, especially for individuals from disadvantaged backgrounds, the military can provide a bridge to a better way of life either in a military or civilian career (Binkin & Eitelberg, 1982).

15. Another less tangible benefit of military service is that of equal status in society. Acquiring a reputation for military valour is a route to social equality. Furthermore, as noted by Binkin & Eitelberg (1982), because it is widely assumed that all citizens are obligated to serve their nation in the military when necessary "the military establishment that excludes special groups from equal service imposes on them the overt stigma of civic inferiority" (p. 26).

16. Scientific data indicate that lesbians and gay men are as highly capable and skilled as heterosexuals and able to perform the same broad range of occupations. Representatives of the United States Armed Forces have often recognized that gay male and lesbian personnel are generally competent at their jobs. In 1990 for example, Vice-Admiral Joseph Donnell, Commander of the United States Navy's Surface Atlantic Fleet, characterized lesbian sailors as generally "hard working, career oriented, willing to put in long hours on the job and among the command's top professionals." But

he then went on to tell his officers that lesbians must be vigorously routed out of the service (Donnell, 1990; Gross, 1990). Similarly, General Colin Powell, Chairman of the Joint Chiefs of Staff, acknowledged in testimony before the United States Congress that individuals "who favour a homosexual lifestyle" might well be "proud, brave, loyal good Americans" (Cassata, 1992, p. A-2).

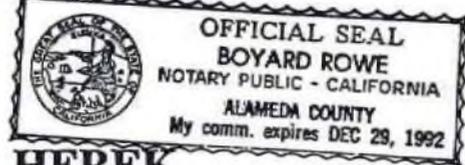
17. Lesbian and gay members of the military also are no less likely than heterosexuals to be able to interact effectively with their peers, subordinates, or superiors. No data exist to indicate that lesbians and gay men are less capable than heterosexuals of controlling their sexual or romantic urges, refraining from the abuse of power, or exercising good judgment in handling authority (see Gonsiorek, 1982, 1991; Herek, 1991).

18. The experience of civilian employers with policies of non-discrimination concerning sexual orientation indicates that gay supervisors are no more likely than heterosexuals to sexually harass their subordinates, to show favouritism, or to violate other organizational policies.

19. The United States and Canadian military have stated that the presence of openly gay and lesbian military personnel would create problems for heterosexual personnel in a way that would interfere with the military's accomplishment of its mission. The concern is expressed that heterosexual personnel would not be capable of respecting and obeying an openly lesbian or gay superior. The concern is expressed that heterosexual personnel would be unwilling to work with lesbians and gay men in the military, especially in close quarters. As a result of these concerns, the argument is made that the presence of openly gay military personnel would undermine cohesion, morale and discipline in the military and interfere with the privacy rights of heterosexual military personnel.

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF GREGORY M. HEREK
SWORN BEFORE ME THIS 6th DAY
OF October 1992

A Commissioner, etc.



GREGORY M. HEREK

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CURRENT POSITION

Associate Research Psychologist, University of California at Davis.

EDUCATION

- B.A. University of Nebraska at Omaha, 1977.
Majors in Psychology and Sociology (magna cum laude).
- M.A. University of California at Davis, 1980.
- Ph.D. University of California at Davis, 1983.
Personality and Social Psychology.
- Post-Doctoral Fellowship Yale University, 1983-1985. *Social Psychology.*

ACADEMIC AND RESEARCH EMPLOYMENT

- 1989-Present Associate Research Psychologist, University of California at Davis.
- 1986-1989 Assistant Professor, Graduate Program in Social and Personality Psychology,
City University of New York.
- 1986 Visiting Assistant Professor, Yale University.
- 1985-1986 Lecturer, Yale University.
- 1983-1985 Postdoctoral Fellow in Personality and Social Psychology, Yale University.
- 1984 Visiting Lecturer, Branford and Ezra Stiles Colleges, Yale University.
- 1978-1983 Teaching Assistant, Research Assistant, and Teaching Associate in Psychology,
University of California at Davis.

OTHER PROFESSIONAL EXPERIENCE AND SERVICE

- 1992 Member, International Scientific Program Committee, VIII International Conference on AIDS.
- 1991-1992 Member, Chancellor's AIDS Technical Advisory Committee, University of California at Davis.
- 1991-1992 Member, San Francisco District Attorney's Special Commission on Hate Crimes.
- 1990-1992 Organizer, Caucus for Lesbian, Gay, and Bisexual Concerns, International AIDS Society.
- 1990-1991 Consultant, National Academy of Sciences Committee on AIDS Research, for study of the social impact of AIDS.
- 1985-1991 Convention Program Committee, APA Division 44. (Member, 1985-87, 1989-91; Chair, 1987-88).
- 1990-1991 Consultant for *amicus curiae* brief by American Psychological Association, Kentucky v. Wasson, challenge to state sodomy law (Kentucky Supreme Court).
- 1990 Scientific consultant to Social Science Research Council for proposed National Survey of Health and Sexual Behavior.
- 1986-1990 Ad Hoc Reviewer and Site Visitor, National Institute of Mental Health. Reviewed research proposals and conducted site visit for projects on psychosocial aspects of AIDS.
- 1989 Chair of research workshop, Mental Health Aspects of Violence Toward Lesbians and Gay Men: Research Issues and Directions. Sponsored by the Antisocial and Violent Behavior Branch, National Institute of Mental Health.
- 1987-1989 Member, Task Force on Psychology and AIDS, American Psychological Association.
- 1985-1991 Consultant for *amicus curiae* brief by American Psychological Association, Watkins vs U.S. Army, challenge to military ban on gay and lesbian members (U.S. Court of Appeals, Ninth Circuit).
- 1986-1987 Chairperson (1987) and Member (1986), APA Committee on Lesbian and Gay Concerns.
- 1985-1987 Chairperson (1987) and Member (1985-86), Steering Committee, Association of Lesbian and Gay Psychologists.
- 1985-1987 Member, APA Task Force on Avoiding Heterosexist Bias in Psychological Research.
- 1985-1991 Consultant for *amicus curiae* brief by American Psychological Association, including Bowers v. Hardwick, challenge to state sodomy laws (U.S. Supreme Court).
- 1986 Witness, Congressional hearings on violence against lesbians and gay men. House Judiciary Committee, Subcommittee on Criminal Justice (Hon. John Conyers, Chair). Provided oral testimony on behalf of American Psychological Association.

SERVICE FOR ACADEMIC JOURNALS

Consulting Editor

Journal of Homosexuality (1984-present)
Journal of Gay and Lesbian Psychotherapy (1986-present)
Journal of Lesbian and Gay Social Work (1991-present)
Journal of Men's Studies (1992-present)

Ad Hoc Reviewer (partial list)

Journal of Personality and Social Psychology
Journal of Experimental Social Psychology
Personality and Social Psychology Bulletin
Psychological Bulletin
Journal of Sex Research
Psychology of Women Quarterly
Sex Roles

GRANTS RECEIVED

- 1988-97 *Public Education About AIDS: A Social Psychological Approach.* National Institute of Mental Health (\$1,432,963).
- 1989-92 *Public Reactions to AIDS: Knowledge, Attitudes, and Behavior.* National Institute of Mental Health (\$674,080).
- 1990-92 *Cultural Differences in AIDS-Related Attitudes and Behaviors Among Californians.* Universitywide AIDS Research Program (\$70,092).
- 1987-89 *Public Knowledge, Attitudes, and Behavior Concerning AIDS: A National Survey.* National Institute of Mental Health (\$121,391).
- 1987-88 *Public Education About AIDS.* PSC/CUNY Foundation (\$6068).
- 1986-88 *A Neofunctional Theory of Attitudes.* National Institute of Mental Health. (\$15,000)
- 1985-86 *Anti-Gay Prejudice and Public Reactions to AIDS.* Society for the Psychological Study of Social Issues, Grants-in-Aid Program. (\$1000)
- 1982 Dissertation research grant from National Gay Academic Union (\$1000).
- 1982 Dissertation research grant from Psychology Department, University of California at Davis (\$600).
- 1979-1981 Annual Graduate Research Awards, University of California at Davis. For research related to attitude-scale development. (\$1400 total)

OTHER AWARDS AND HONORS

- 1992 Outstanding Achievement Award, Committee on Lesbian and Gay Concerns, American Psychological Association.
- 1991 Fellow, American Psychological Association, Division 44.
- 1989 Award for "Best Contribution to Empirical Research in Peace Psychology," from Psychologists for Social Responsibility. Presented at the annual meeting of the American Psychological Association, New Orleans. [Shared with Irving L. Janis and Paul Huth for *Herek, Janis, & Huth (1987)*]
- 1989 Recipient of first annual award for "Distinguished Scientific Contributions to Lesbian and Gay Psychology," Society for the Psychological Study of Lesbian and Gay Issues (APA Division 44). Presented at the annual meeting of the American Psychological Association, New Orleans.
- 1989 Master Lecturer, American Psychological Association.
- 1984 Mark Freedman Memorial Research Award, Association of Lesbian and Gay Psychologists. Presented at the annual meeting of the American Psychological Association, Toronto.
- 1983 Postdoctoral Fellowship, Yale University.
- 1982 Teaching Award for Outstanding Graduate Student, University of California at Davis.
- 1979-1982 Regents' Fellowships, University of California at Davis (total of three annual awards).
- 1977 First Prize, J.P. Guilford National Undergraduate Research Competition sponsored by Psi Chi Honor Society. Presented at the annual meeting of the American Psychological Association, San Francisco.
- 1977 First Prize, Nebraska Psychological Association Undergraduate Research Competition.

PROFESSIONAL MEMBERSHIPS

American Psychological Association (Fellow, Division 44; Member, Divisions 8, 9, 35, 45)
American Psychological Society (Fellow)
National Association of Lesbian and Gay Psychologists
American Association for Public Opinion Research
International AIDS Society
American Public Health Association
Society for the Advancement of Social Psychology

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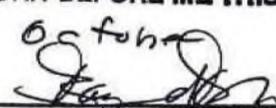
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RECENT INVITED LECTURES AND COLLOQUIA (continued)

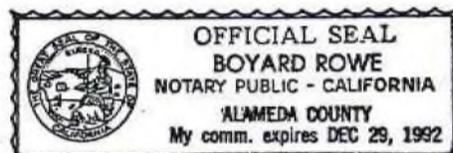
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EXHIBIT "B"

THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF GREGORY M. HEREK
SWORN BEFORE ME THIS 6th DAY
OF October 1992


A Commissioner, etc.

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Court File No. T-160-90

**IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION**

B E T W E E N:

MICHELLE DOUGLAS

Plaintiff

- and -

HER MAJESTY THE QUEEN

Defendant

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GREGORY M. HEREK**

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